IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 2.12.2019

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.15579 of 2002

The State of Tamil Nadu,
rep. by the Deputy Commissioner (CT),
Chennai (North) Division,
Chennai 600 006. ... Petitioner

Versus

1. Tvl. Hindustan Motors Ltd.,
24, Ethiraj Road, Chennai.

2. The Secretary,
Tamil Nadu Sales Tax Appellate Tribunal, (Main Bench),
Chennai 600 104. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari to call for the records relating to the common order dated 17.10.2000 of the second respondent made in S.T.A.No.87 of 1999 and quash the same.

For Petitioner : Mr.M.Mohammed Shaffiq,
Special Government Pleader (T)

For Respondent : Mr.K.Ramani

ORDER

(Order of the court was made by Dr.VINEET KOTHARI, J.)

The Revenue has filed this Writ Petition assailing the concurrent findings of facts rendered by the two Appellate Authorities below to the effect that the sales of Heavy Earth Moving Equipments by the Respondent-Assessee was not an inter-State Sale but an intra-State Sale and therefore, it is liable to tax only under TNGST Act.

2. The relevant findings of the first Appellate Authority and the Sales Tax Appellate Tribunal are quoted below for ready reference:-

Finding of the First Appellate Authority:-

> "There was no proof that the earth moving equipments were taken either by the appellant or by their agent to outside the State. In the absence of such evidence, the transaction cannot be considered as one in the course of inter-State trade. So the Assessing Officer is not correct in treating the transaction as inter-State sales and levying 10% tax, only against the local tax, Surcharge, Additional Surcharge and Additional Tax levied in the original order. In the above circumstances, I order for the deletion of 10% tax levied under the CST Act on the turnover of Rs.2,04,35,389/- and allow the claim."

Finding of the Tribunal:-

> "14. In this context, the learned advocate for the respondent has pointed out that in some of the case, the goods were taken delivery by customers outside the State for local works. But, the customers are mostly financial institutions and transport companies. In respect of some purchase order placed by leasing companies for purchase of Hindustan 20-21 Loader from the respondent and the lease of the equipment to the Ultimate user, there is a clear indication that ultimate user is available inside the State of Tamilnadu and there was no movement of Loader outside the State (typed set page 1 to 10 of set 3). So, there is no proof with the Department for the movement of goods outside the State, but on the contrary, the respondents are having proof in some cases that though purchaser is an outsider, the consumption is only in Tamilnadu. The Department has not taken efforts to verify the movement of goods after the purchase atleast in selected cases. These huge machine would not have been taken to other States without passing through the checkpost situated in the Borders of Tamilnadu. If the Department has got evidence that the goods have been taken outside the State of Tamilnadu, then there may be cases for the State. Even then, the transport documents have to be verified to find out who is the real transporter and who is the real owner at the time of transport. All these vital informations are lacking in these assessment years. When the

Assessing Officer has proposed to treat certain turnover under Central Sales Tax, it is his obligation to prove that the goods have moved outside Tamilnadu. But this has not been done by the Assessing Officer for both the years. The Assessing Officer has taken a view that since the excise duty amount has been included in the price list and the insurance cover were with the buyer, the turnover can be an inter-State sale. The point is whether sale is concluded in Tamilnadu or it has completed only in other States. In this context, it is better to produce Section 4(2) of the Central Sales Tax Act.

3. Mr.M.Mohammed Shaffiq, the learned Special Government Pleader (Taxes) appearing for the Revenue was unable to point out any contra evidence available on record to this court to establish that the Authorities below have erred in arriving at a finding that the transactions in question cannot be considered as one of inter-State Sales and they are only intra-State sales.

4. The learned counsel for the Respondent/Assessee supported the impugned orders.

5. Having heard the learned counsel for the parties, we are of the considered opinion that there is no merit in the present Writ Petition filed by the Revenue and the concurrent findings of the Appellate Authorities below are based on relevant materials and in the absence of any contra evidence available on record, no contrary view can be taken. In view of the same, the Writ Petition is liable to be dismissed and accordingly, it is dismissed. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

ssk.

To:

1. The Secretary,
   Tamil Nadu Sales Tax Appellate
   Tribunal, (Main Bench),
   Chennai 600 104.

2. The Deputy Commissioner (CT),
   State of Tamil Nadu,
   Chennai (North) Division,
   Chennai 600 006.

3. Tvl. Hindustan Motors Ltd.,
   24, Ethiraj Road, Chennai.

+1cc to the Special Government Pleader Sr.101316

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srg 13/01/2020